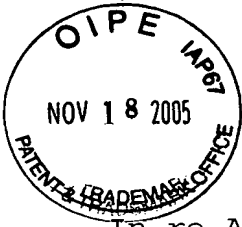


ATTORNEY DOCKET NO.
062986.0214
(1151.00)

PATENT APPLICATION
09/910,587

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Randal G. Martin, et al.
Serial No.: 09/910,587
Filing Date: July 20, 2001
Examiner: Feben M. Haile
Art Unit: 2663
Title: SYSTEM AND METHOD FOR ORDERING OF
DATA TRANSFERRED OVER MULTIPLE
CHANNELS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

REQUEST FOR PRE-APPEAL BRIEF REVIEW

In response to the Advisory Action mailed October 3, 2005, Applicant respectfully request a Pre-Appeal Brief review of this Application so that the rejection of the claims and the objections to the Application can be reconsidered prior to submission of an Appeal Brief.

REMARKS

This Request for Pre-Appeal Brief Review is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005. Pursuant to the Official Gazette Notice, this Request for Pre-Appeal Brief Review is being filed concurrently with a Notice of Appeal. The Applicant respectfully requests reconsideration of the Application in light of the remarks set forth below.

Claims 1-18 currently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Doshi, et al. in view of Forin. In the prosecution of the present Application, the Examiner's rejections and assertions contain clear errors of law, including a failure to establish a prima facie case of obviousness. To assist the Panel in the review of this Request for Pre-Appeal Brief Review, Applicant submits the following brief summary for consideration.

In the Advisory Action of October 3, 2005 and the Final Action of July 18, 2005, the Examiner indicates that the Doshi, et al. patent discloses at FIGURE 1 and col. 3, lines 29-35, that a transmit controller 120 can provide a data packet over a communication link 121 and that communication path 121 may consist of a number of data links. However, as clearly shown and disclosed in the Doshi, et al. patent, the data links refer to connections between different packet switches that may lie in communication path 121 between transmitter 100 and receiver 200. There is not one iota of information in the Doshi, et al. patent that its transmit controller 120 can provide data packets over different channels as required by the claimed invention. The most that the Doshi, et al. patent suggests is that data packets are sent over communication path 121 by transmit controller 120 and work their way to receiver controller 205 through possibly one or more packet switches connected by data links. There is

no disclosure whatsoever that packets can be transported from transmit controller 120 over different data links. Similarly, receiver 200 of the Doshi, et al. patent receives packets from a single data link of communication path 121, either directly connected to transmitter 100 or connected to an intermediate packet switch between transmitter 100 and receiver 200. The Doshi, et al. patent fails to provide any suggestion that receiver 200 can receive packets over a plurality of channels as required by the claimed invention.

Most notable of the legal errors present in the examination of the Application is a failure of the Final Office Action of July 18, 2005 to establish a prima facie case of obviousness of the claims in the Application. There has been no mention of the three criteria for a prima facie case of obviousness as spelled out in M.P.E.P. §2143. The Examiner has not cited any language from the prior art that would suggest that the Doshi, et al. and Forin patents can be combined as proposed. The Examiner only provides a baseless subjective and conclusory "it would have been obvious" statement for combining the Doshi, et al. and Forin patents without providing any objective reasoning or citing any evidence of record to support such a position. The Examiner has not provided any reasons how the proposed Doshi, et al. - Forin combination would have any expectation of success let alone a reasonable expectation of success. As shown above, the proposed combination fails to teach or suggest all of the claim limitations. As a result, the Examiner has failed to establish a prima facie case of obviousness in this Application.

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CONCLUSION

Applicant has now made an earnest attempt to place this Application in condition for allowance. For the foregoing reasons and for other apparent reasons, Applicant respectfully requests allowance of all pending claims.

The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicant

A handwritten signature in dark ink, appearing to read "Charles S. Fish", is written over the printed name.

Charles S. Fish

Reg. No. 35,870

November 18, 2005

Correspondence Address:

2001 Ross Avenue, Suite 600

Dallas, Texas 75201-2980

(214) 953-6507

Customer Number: 05073